

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter of)
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Implementation of the)
Telecommunications Act of 1996)
)
Amendment of Rules Governing)
Procedures To Be Followed When)
Formal Complaints Are Filed Against)
Common Carriers)

CC Docket No. 96-238

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COMMENTS OF
MFS COMMUNICATIONS COMPANY, INC.

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**COMMENTS OF
MFS COMMUNICATIONS COMPANY, INC.**

MFS Communications Company, Inc. ("MFS")¹, by its undersigned counsel, respectfully submits the following comments in response to the Commission's Notice of Proposed Rulemaking (released November 27, 1996) in the above-captioned proceeding.²

INTRODUCTION AND SUMMARY

MFS supports the Commission's efforts to improve the speed and effectiveness of the formal complaint process by establishing rules to implement the Act's³ deadlines for the

¹ MFS is a subsidiary of WorldCom, Inc.

² *In the Matter of Implementation of the Telecommunications Act of 1996, Amendment of Rules Governing Procedures to Be Followed When Formal Complaints Are Filed Against Common Carriers, Notice of Proposed Rulemaking*, FCC 96-460, CC Docket No. 96-238 (rel. Nov. 27, 1996) ("Notice" or "NPRM").

³ Telecommunications Act of 1996, Pub. Law No. 104-104, 110 Stat. 56 (1996) ("1996 Act" or "Act")

resolution of complaints against carriers. MFS urges the Commission to establish rules that provide for rapid resolution of claims while maintaining the fairness and reliability of the complaint resolution process. The Commission's twin goals of establishing a "pro-competitive, de-regulatory national policy framework"⁴ and of protecting consumers when the market fails to protect them can only be accomplished if carriers and consumers have confidence that the Commission will resolve complaints quickly and fairly.

COMMENTS

I. Pre-Filing Procedures and Activities (NPRM Part II A, para. 27-29)

MFS supports the Commission's efforts to encourage parties to engage in pre-filing discussions designed to settle disputes or narrow issues. In the NPRM, paragraph 28, the Commission tentatively concludes that, as part of filing a formal complaint, a complainant should be required to certify that it discussed or attempted to discuss the possibility of good faith settlement with the defendant. The Commission further concludes that summary dismissal of the complaint is an appropriate sanction for failing to provide such a certification.

MFS supports the Commission's recommendations and urges the Commission to adopt a rule imposing a similar requirement on defendants. Defendants should be required to certify that they discussed settlement with the complainants.⁵ If defendants fail to

⁴ S. Conf. Rep. No. 230, 104th Cong., 2nd Sess. 1 (1996) ("Joint Explanatory Statement").

⁵ Text of proposed rule in Appendix A (See §1.724(j)).

include this certification in their answers, the answers should be stricken from the record. Pre-filing discussions will result in successful settlement or resolution of disputes and a concurrent decrease in the number of complaints filed with the Commission only if both parties are required to participate in those discussions.

In paragraph 29, the Commission seeks comment on whether a committee of neutral industry experts would serve a needed or useful role in addressing disputes involving technical issues. MFS believes that involving a committee of "neutral industry experts" during the pre-filing stage of the formal complaint procedure will be unworkable. Potential conflicts of interest together with likely reluctance of most carriers to share confidential and proprietary information with members of the industry -- regardless of guarantees of confidentiality -- would outweigh the marginal benefit gained in resolving disputes over technical issues. Moreover, the participation of a Commission-sanctioned committee prior to the filing of a formal complaint confuses the roles of both the committee and the Commission. For example, what, if any, binding effect would a committee decision have on the parties? Would the parties retain the right to file a complaint with the Commission?

Experts could be used within the formal complaint procedure in appropriate cases. If, after review of initial pleadings, the parties or the Commission staff believe that expert assistance would be necessary or helpful to the resolution of technical factual disputes, the mechanism for obtaining expert assistance can be discussed at the initial status

conference. Such a procedure limits the use of experts to cases in which expertise is necessary or beneficial to the resolution of the complaint.

II. Service (NPRM II B, para. 30- 35)

MFS urges the Commission to adopt rules requiring a complainant to serve the defendant carrier, the Commission's secretary and the Chief of the division or branch responsible for handling the complaint simultaneously. In conjunction with these rules, the Commission should establish and maintain an electronic directory -- available on the Internet -- (1) of agents authorized to receive service of complaint on behalf of carriers that are subject to the provisions of the Act, and (2) of the relevant Commission personnel who must be served. In combination, these measures will increase the speed and efficiency of service.

MFS proposes that the electronic database include the following information on authorized agents: name, address, telephone number, facsimile number and e-mail address. The Commission should require carriers to provide updated information within five (5) business days following any change. Nonetheless, a carrier cannot be permitted to escape service of a complaint because it failed to provide accurate information to the Commission. Therefore, service on the agent listed as the authorized agent in the Commission's electronic database should constitute effective service, even if the carrier

has changed agents. Such a rule provides carriers with an incentive for updating information.⁶

MFS also supports the Commission's proposal requiring complainants to file a completed Formal Complaint Intake Form with the complaint. The proposed form is simple to complete, and like civil cover sheets required by federal district courts, allows Commission staff and defendants to identify the parties involved and the relevant statutory provisions at issue.

MFS urges the Commission to require that all pleadings subsequent to the complaint be served by facsimile or Internet e-mail. Service by facsimile or e-mail eliminates the lag time in service by mail and is ecologically sound. If the Commission adopts a rule requiring service by overnight mail or delivery service, facsimile service should not be required. Duplicative forms of service merely waste time and resources and serve no purpose.

III. Format and Content Requirements (NPRM Part II C, para. 36-46)

MFS agrees that the utility and quality of the complaint, answer and other filings must be improved to allow resolution of formal complaints within the Act's complaint resolution deadlines. In adopting modified requirements for pleadings, the Commission must be careful not to limit a complainant's ability to bring or pursue an action by limiting the opportunity to develop a case and to obtain information particularly where complainants

⁶ Text of proposed rule in Appendix A (See §1.47(h)).

are small businesses or individuals that have limited resources available to engage in pre-complaint investigation. Parties must be permitted a full and fair opportunity to develop their cases factually and legally.

MFS urges the Commission to continue to permit complainants to make allegations based on "information and belief." Complainants should not be prevented from bringing a complaint merely because information is within the sole possession, custody and control of other party. Although parties are required to discuss settlement pre-filing, there is no requirement of an early exchange of information. Thus, parties can engage in good faith settlement discussions without obtaining sufficient facts to plead a claim. Prohibiting allegations based on "information and belief" will unduly inhibit a complainant's ability to present claims of unlawful behavior against carriers under the Act.

In paragraph 43, the Commission proposes the adoption of a rule requiring voluntary initial disclosures. This proposed rule parallels a requirement in the Federal Rules of Civil Procedure. The Commission would require a party to file two sets of information at the time for filing an initial pleading. This information would include: (1) the name, address and telephone number of each individual likely to have discoverable relevant factual information and the subjects of that information, and (2) a copy of, or description by category and location of all relevant documents, data compilations and tangible things in the possession, custody, or control of the party.

MFS urges the adoption of early disclosure of information. The Commission should clarify that parties should be required to provide the *business* address and telephone number of these persons where available. Moreover, MFS urges the Commission to require parties to a description of relevant documents. Requiring parties to serve and/or file copies of documents with initial pleadings would result in thousands of documents being copied unnecessarily. Many of the documents identified by parties in initial disclosures have little or no relevance to the dispute. Parties should arrange to review documents and copy only specified documents. This procedure results in fewer unnecessary copies and reduces the adverse ecological and economic consequences of copying, filing and serving thousands of documents.

MFS acknowledges that the revised form and content requirements for filing a formal complaint will require the expenditure of time and resources that may not be available to individuals and small businesses. Therefore, MFS agrees that the Commission should waive certain of the form and content requirements upon a showing of "good cause." Nonetheless, some minimum standard must be maintained. At a minimum, complainants should be required to: (1) certify that good faith settlement has been discussed, (2) complete a Formal Complaint Intake form, (3) provide sufficient detail in the complaint for a defendant to answer, and (4) provide sufficient identifying information to allow the defendant to serve papers on the complainant. Complying with the certification requirement requires little time and resources. Moreover, by maintaining the certification

requirement for all complaints, the Commission will be encouraging early settlement discussions.

MFS believes that carriers receiving complaints have a right to understand the allegations against them and be given a meaningful opportunity to respond. Accordingly, in cases where the Commission waives form and content requirements, defendants must be permitted to file motions requesting that the allegations in the complaint be made more definite and certain. In the alternative, the Commission could adopt a form complaint that requires the complainant to fill in certain mandatory information: name and address of complainant and defendant(s); statement of facts on which the complaint is based; and attachment of documents relied on by complainant.⁷ Such a form complaint would ensure that a defendant carrier receive the information needed to respond to the complaint while permitting a *pro se* complainant to utilize the formal complaint process.

Finally, the Commission should require that "good cause" be pled in the initial complaint. Since most persons seeking waivers will do so for financial reasons, the Commission could establish a form to be filled out when requesting a waiver. This form could be appended to the Form Complaint that MFS proposes for use by *pro se* complainants. On the form, the complainant could identify the requirements sought to be

⁷ Requiring the attachment of documents relied on by a *pro se* complainant deviates from MFS' earlier position that documents need not be exchanged with the complaint. However, *pro se* complainants are often unable to convey the facts and circumstances giving rise to their complaint in an accurate and concise manner. Requiring them to produce relevant documents with the complaint allows the Commission and the defendant to determine the nature of the complaint.

waived and the reasons for the requested waiver. Similar forms are used by some courts when persons are filing *in forma pauperis* and/or are seeking waiver of filing fees. The forms require a brief statement of the party's assets and contain a statement to be signed under penalty of perjury that the party lacks sufficient funds to comply with ordinary filing requirements. Requiring a complainant to complete such a form is a simple method of ensuring that only a party actually in need of a waiver of the pleading requirements, receives one.

IV. Answers (NPRM Part II D, para. 47)

MFS urges the Commission to reduce the time for filing an answer to a complaint to 20 days after service or receipt of the complaint. MFS believes that shortening this deadline will expedite the formal complaint procedure without any prejudice to the parties. Under the Federal Rules of Civil Procedure, parties must answer a complaint 20 days after service⁸ and most parties easily comply with that deadline.

V. Discovery (NPRM Part II E, para. 48-56)

MFS agrees that discovery disputes are often "the most contentious and protracted component of the formal complaint process." NPRM, ¶49. Nonetheless, the wholesale elimination of discovery would unduly prejudice the rights of all parties involved in the formal complaint process. Elimination of discovery would limit parties' ability to develop facts to support claims and defenses. Parties would be litigating in a vacuum, unaware of

⁸ Federal Rule of Civil Procedure 12(a)(1)(A).

potentially critical information. The reliability and fairness of any decision rendered in that process would be subject to question. Moreover, the elimination of discovery could well result in parties making more motions seeking discovery, thereby increasing the burden on Commission staff and the time for completion of discovery.

Discovery must be tailored to eliminate as many disputes as possible while still permitting the parties access to crucial information. Therefore, MFS proposes the following measures:

- (1) the elimination of interrogatories as a discovery tool. Responses to interrogatories are drafted by counsel and often provide no useful information;
- (2) adoption of the Commission's proposed voluntary initial disclosures; and
- (3) a mandatory meet and confer conference between the parties to narrow issues and discuss the scope and timing of any additional discovery. MFS' proposals keep the impetus for providing and pursuing discovery on the parties while giving the ultimate control of the discovery process to the Commission.

MFS proposes that parties be required to meet and confer after the filing of the answer and before the first status conference to discuss certain specified issues, including discovery. Meet and confer conferences are required by the United States District Court for the District of Columbia.⁹

⁹ Rule 206, Rules of the United States District Court for the District of Columbia.

If possible, the meet and confer should be in person. The parties must discuss the following issues:

- if discovery beyond exchange of documents and identity of persons with knowledge is necessary. If the parties believe that additional discovery is necessary, they should identify what discovery is needed;
- if depositions or submission of affidavits are necessary. If the parties agree that depositions will be needed, they should agree to the number of depositions, the identity of the deponents and proposed dates for depositions;
- the timetable for completion of all discovery;
- the need or desirability of referring technical disputes to a neutral expert;
- if, based on the information contained in the complaint and answer, there is a realistic possibility of settling the case;
- if briefing is necessary, or if the case can be decided based on the pleadings;
- if parties are willing to agree to bifurcate liability and damages phase in cases where the complainant has not already opted for bifurcation;
- disagreements, if any, over whether documents should be designated as confidential or proprietary;
- in Section 271(d) cases, whether parties can agree to extend or waive the 90-day resolution deadline;
- draft joint stipulation of stipulated facts and key legal issues.

Any agreements reached during the meet and confer must be reduced to joint consent orders that can be entered by staff at the first status conference. Any disputes between parties should be reduced to writing and submitted to the staff at the first status

conference for resolution. At the initial status conference, the parties should be prepared to inform staff of the outcome of agreements reached or disputes that arose during the meet and confer. Staff can resolve the disputes between parties, establish a timetable for completion of discovery and establish a briefing schedule.¹⁰

If the Commission prefers, it can require that the parties hold the meet and confer meeting after the initial status conference. This would give the Commission staff more control over that meeting. At the initial status conference, the staff could determine which topics must be discussed and agreed to by the parties at the meet and confer. If the Commission adopts the post-status conference meet and confer requirement, it should extend the time for parties to file the joint statement of key legal issues and facts in dispute as well as joint orders to some time after the scheduled meet and confer. Although this might slow the formal complaint process down, the benefits of encouraging discussion that could lead to narrowing issues and/or settlement in the early stages of the complaint process outweigh any slight delay.

MFS urges the Commission to abandon any proposal to require parties to file the documents identified in the initial disclosures with the Commission. Such a requirement would result in millions of documents being copied unnecessarily. This influx of documents would be an administrative nightmare for the Commission and the parties. MFS urges the Commission to adopt a rule requiring that parties exchange descriptions of relevant

¹⁰ MFS is attaching the text of a proposed rule regarding the "meet and confer" requirement in Appendix A hereto (See new §1.730).

documents. The parties can determine whether to copy all documents or whether to review and copy only designated documents.

MFS urges the Commission to encourage parties to enter into voluntary cost-recovery systems as a mechanism to facilitate prompt exchange of information as proposed in paragraph 54. Many parties agree to such systems now.

MFS agrees that the shortened deadlines require voluntary compliance with discovery rules. Parties must engage in good faith efforts to resolve discovery disputes and to comply with the rules of the Commission. Failure to comply with basic discovery rules jeopardizes the functioning of the complaint resolution process. Therefore, sanctions for failure to comply are appropriate.

MFS agrees that the Commission should utilize the entire panoply of sanctions available. The Commission, however, should grant summary dismissal or deny relief as a sanction for failure to comply with discovery rules only in the most egregious cases. These cases should be rare. For example, a party must have the right to oppose a motion to compel if such opposition is in good faith and founded on an arguable legal basis. Accordingly, MFS urges the Commission to adopt a rule whereby the Commission would enter a show cause order three days prior to sanctioning a party for failure to comply with a discovery rule. The show cause order would state the sanction that will be imposed if the party does not comply with the discovery order within three days. This process gives a

party a last chance to comply with the discovery rule prior to facing summary dismissal or denial of requested relief.¹¹

In paragraph 56, the Commission proposes to amend its rules to authorize the Common Carrier Bureau, on its own motion, to refer factual disputes to an administrative law judge ("ALJ") for an expedited hearing. MFS urges the Commission to adopt such a rule. Such a procedure would facilitate faster resolution of complaints filed against carriers.

There, however, must be clarification of the procedures for making such a referral. For instance, will only certain factual issues be referred to the ALJ or will an entire controversy be referred with a blanket instruction for the ALJ to resolve all outstanding factual issues? Referring only designated issues to an ALJ could result in piece-meal resolution and litigation of key issues. Referring the entire controversy to the ALJ, however, could result in duplicative briefing before the ALJ and later, before the Commission. Moreover, it is unclear whether there would be a right to appeal factual determinations to the Commission. If such appeal rights exist, the interjection of an ALJ into the formal complaint process could actually increase the time for resolving the complaint.

¹¹ Text of proposed rule in Appendix A (See New §1.731A).

VI. Status Conferences (NPRM Part II F, para. 57-59)

MFS supports the Commission's proposal to require that a status conference be held 10 business days after defendant files its answer. In interim, MFS proposes that the parties be required to meet and confer. The meet and confer rule will force parties to focus on areas of agreement and disagreement. Thus, the initial status conference can be used to resolve disputes between parties. The meet and confer and the initial status conference will result in settlement of more cases or a narrowing of issues in dispute thereby reducing litigation costs.

MFS urges the Commission to require staff to memorialize oral rulings made in status conferences. If the Commission adopts MFS' proposed meet and confer rule, the parties should be prepared to present joint orders, position statements on disputed issues and a joint stipulation of facts and key legal issues at the status conference. Therefore, the parties should be able to submit joint proposed orders for any rulings made during the conference within 24 hours. MFS also urges the Commission to adopt a rule that will encourage parties to tape record the Commission's summary of its oral rulings. MFS does not believe that a stenographer is necessary or cost-effective alternative.

VII. Cease, Cease-and-Desist Orders and Other Forms of Interim Relief (NPRM Part II G, para. 60-62)

In paragraph 60, the Commission tentatively concludes that the show cause hearing requirement contained in Section 312 does not apply to Section 208 and related complaint proceedings, even if the proceedings lead to cease-and-desist orders. MFS agrees with

the Commission's conclusion. The short deadlines in Section 208 do not allow sufficient time for extraneous hearings, including show cause hearings.

MFS urges the Commission to adopt the standard used by courts in granting interim relief as the standard for granting cease orders, cease-and-desist orders and other interim relief. MFS also encourages the Commission to adopt a rule that permits the Commission to require the posting of a bond or other security in certain cases prior to granting interim relief.

IIX. Damages (NPRM Part II H, para. 63-69)

MFS supports the Commission's proposal encouraging complainants to bifurcate the liability and damages phases of the formal complaint process through the use of the supplemental complaint rules. Damages calculations are often complex and require targeted discovery. Parties spend much of their time and effort in discovery and briefing on the damages aspect of the case. By bifurcating the proceedings, the Commission and the parties can focus on the liability aspect of the case. If there is a finding of no liability, the time and resources that otherwise would have been spent on damages will be saved. Moreover, bifurcation will reduce the number and complexity of issues that must be decided within the statutory deadlines.

MFS urges the Commission to adopt rules that encourage bifurcation of formal complaint proceedings, but do not require them. MFS believes that complainants have the right to have all issues related to their complaints resolved in a single proceeding. MFS

believes that many complainants will opt for the supplemental complaint procedure particularly in cases involving complex damages calculations. In less complex cases, complainants should be able to have all issues resolved together.

MFS believes that bifurcation is a sensible alternative that can save the parties and the Commission time and effort. Therefore, MFS has included bifurcation as an issue to be discussed by the parties at the meet and confer.

MFS supports the Commission's proposal in paragraph 66 to adopt a rule requiring a complaint seeking an award of damages to contain a detailed computation of damages. The complaint should state the amount of damages, provide an explanation of the damages calculation and identify documents relied on in making the calculation. MFS also urges the Commission to require parties to identify the person who made the damages' calculation. MFS recognizes that damages' calculations are complex and parties often disagree on the proper method of performing the calculation. Nonetheless, resolution of these issues will be furthered if the parties understand the opponent's method of calculating damages. Moreover, discovery on damages can be based on these initial disclosures and can be limited.

MFS believes that requiring the parties to agree on the amount of damages is unworkable. The possibility for disagreement is endless. Moreover, MFS strongly believes that parties are entitled to a Commission determination of substantive issues, including damages.

MFS supports the adoption of a rule that provides for a limited time between the bifurcated liability and damages phases of a case to encourage settlement. During the hiatus, the parties should be encouraged to utilize alternative dispute resolution mechanisms to resolve the damages issues.

In addition, the Commission should be permitted to refer the resolution of the damages issue in complex cases to an administrative law judge. Damages hearings can often be long and complex. An administrative law judge can give the damages case the time and effort that is needed.

MFS believes that in bifurcated proceedings, after a finding of liability, the Commission should be permitted to require a defendant to post a bond or to place monies into an interest-bearing account to cover part or all of the damages. MFS does not believe that all of the standards necessary for obtaining a preliminary injunction must be met before requiring payment. After all, the Commission will be requiring payment only after a finding of liability. In most cases, the damages phase will involve the calculation of the appropriate amount of damages, not complainant's entitlement to damages. Therefore, the Commission should require a defendant to pay damages on: (1) a showing of irreparable harm, or (2) a showing that there is a likelihood that defendant will default on the damages award. Irreparable harm is shown if (1) the defendant has failed to make payments on judgments in the past; (2) the defendant is filing or has filed bankruptcy; (3)

the defendant is insolvent; or (4) the defendant has indicated that it will not make the payment.

A complainant that has chosen to bifurcate proceedings must be guaranteed some protection pending resolution of damages.

IX. Cross-Complaints and Counterclaims (NPRM Part II I, para. 70-71)

MFS encourages the Commission to adopt a rule that requires defendants to bring all counterclaims and/or cross-claims at the time of filing the answer. By the time the answer must be filed, defendants should be aware of any compulsory counterclaims that must be brought. Nonetheless, this rule is equitable only if parties are permitted to plead upon "information and belief." Defendants might not have all of the facts necessary to plead a compulsory counterclaim at the time of filing the answer. If failure to plead such a claim with the answer results in the claim being barred, defendants must be given an opportunity to plead on "information and belief" and to develop their case during the discovery process.

X. Replies (NPRM Part II J, para. 72-73)

MFS agrees that replies to answers should be barred. Again, this rule is equitable only if the Commission deems the complainant to deny all allegations relating to affirmative defenses pled by the defendant. Moreover, in cases where there is a counterclaim or cross-claim, a complainant must be permitted to answer those claims.

MFS also agrees that replies to motions should, as a rule, be barred. However, MFS proposes that a reply be permitted upon a showing that the opposition to the motion raised issues not addressed in the initial motion. Although oppositions should be limited to issues raised in the original motion, parties often raise other issues in the opposition. In those cases, a reply limited to newly raised issues should be permitted.

XI. Motions (NPRM Part II K, para. 74-78)

MFS agrees with the Commission's goal of reducing unnecessary motions. MFS believes that the Commission should adopt a rule requiring parties to certify that they made a good faith attempt to resolve discovery disputes before filing a motion to compel.

MFS suggests an alternative to filing motions to compel. After the parties make a good faith attempt to resolve any disputes, the parties could arrange a joint conference call with Commission staff. At this conference call, the parties could present their respective positions orally to the staff. The staff could then rule on any discovery dispute. If the staff determines that legal briefing of the issues is necessary, a briefing schedule could be entered. This would eliminate the need for most motions to compel.¹² If a party refuses to engage in discussions with the other party, the moving party would retain the right to file a motion to compel. That motion must contain certification of the dates and times that the movant attempted to contact the non-movant, and the non-movant's response, if any.

¹² Text of proposed rule in Appendix A (See § 1.729(f)).

MFS urges the Commission to adopt a rule that failure to file an opposition can be grounds for granting a motion. The Commission's proposed rules all but eliminate the need for motions. Parties are encouraged to meet and attempt to resolve most disputes. Therefore, motions should only be necessary in the rare cases where the parties are unable to reach agreement, and in these cases it is not unreasonable to require the filing of an opposition.¹³

XII. Confidential or Proprietary Information and Materials (NPRM Part II L, para. 79-80)

MFS supports the Commission's revision of rules to permit parties to designate as proprietary any materials generated in the course of a formal complaint procedure. Documents and information are routinely generated during the formal complaint procedure. Certain of this information, including damages calculations, could be considered confidential and/or could be based on confidential information. By permitting a party to designate such information as proprietary, the Commission is encouraging parties to exchange that information without fear of it being publicly disseminated.

XIII. Other Required Submissions (NPRM Part II M, para. 80-83)

MFS supports the Commission's proposal requiring parties to submit a joint statement of stipulated facts and key legal issues. MFS proposes that the parties discuss such a statement at the meet and confer conference. Such a statement can be drafted by

¹³ If an opposing party is not represented by counsel, the party filing the motion should be required to include on the cover page of the motion a notice that failure to file an opposition may be grounds for the Commission to grant the motion.

the parties and submitted during the first status conference. Although MFS' proposal would give the parties five additional days to draft the joint statement, MFS believes that the meet and confer requirement -- covering discovery issues as well as the stipulations -- will facilitate faster resolution of complaints overall.

MFS believes that the wholesale elimination of legal briefing in cases not involving discovery would be highly prejudicial to the parties. Parties must be permitted to review the opponent's pleadings and the joint stipulation of facts and key legal issues before being required to submit proposed findings of fact and legal analysis. Without an opportunity to review the opponent's position, findings of facts and conclusions of law would be of limited use. Moreover, the burden of adequately researching issues could fall on the Commission staff, increasing the effort required to resolve complaints. Although MFS does not support the elimination of briefing in all cases, it recognizes that in some cases, briefing is unnecessary. The parties may be able to agree to submit the case on the pleadings without briefs. Therefore, MFS proposes that the parties be required to discuss whether the case can be submitted on the pleadings at the meet and confer.

MFS supports the proposal that the Commission staff could limit the scope of the briefs. After review of the pleadings and the joint stipulation, staff could issue a briefing schedule listing the issues to be briefed. Since the parties have already agreed to the issues that they believe are the "key" legal issues, MFS anticipates that the majority of the Commission's briefing orders will require the parties to brief those agreed upon key issues.